

than any other investment. Democrats are committed to making this investment by expanding Head Start, early Head Start, and childcare funding. At the same time, we propose improving the quality of these programs by requiring improved standards for teachers and seeing that they are supported, trained, and adequately compensated to do the job.

We also must do more to ensure that America is globally competitive by raising our skills. To be globally competitive, we must also inspire a renaissance in math and science education in America so that all Americans are prepared for the jobs of tomorrow. Today, Democrats are taking an essential first step in winning the global and math/science arms race by making college tuition free for any young person willing to work as a math, science, or special education teacher. We must make the United States first in the world rather than 29th in math and science.

Finally, when it comes to jobs, the Fair Wage, Competition and Investment Act will help restore the faith of Americans that if they work hard and play by the rules they can live the American dream.

The bill raises the minimum wage to \$7.25 an hour to improve the quality of life for 7.5 million workers. Despite Democratic efforts to raise it, the minimum wage has been stuck at \$5.15 an hour for 7 long years.

And the bill will restore overtime protections for the more than 6 million Americans denied overtime pay and the guarantee of the 40-hour workweek by the Republican overtime rule. It will also expand overtime protections to cover additional workers.

The Democratic bill eliminates tax breaks for companies that ship good American jobs overseas. It requires companies that send jobs to other countries to provide advance warning to workers and communities.

The bill makes significant investments in American roads and waterways, broadband technology, and research and development to increase our competitiveness, improve the quality of our lives, and create new jobs to help make up for those lost under Republican leadership.

These are the kinds of initiatives that Democrats will fight for this year—initiatives that will expand opportunity, provide a secure future for our families, and improve the quality of life for all Americans.

#### THE PRESIDENT'S NOMINEES

Mr. KENNEDY. Mr. President, Jay Bybee, William Haynes, Condoleezza Rice, Alberto R. Gonzales—these four persons have three things in common. They were all high officials in President Bush's first administration. They were all key participants in the shameful decision by the administration to authorize the torture of detainees at Guantanamo and in Iraq and they have all been nominated by President Bush for higher office.

Jay Bybee, head of the Justice Department's Office of Legal Counsel, was nominated for a lifetime appellate court judgeship in the spring of 2002, before he wrote the now notorious legal memorandum redefining torture so narrowly that virtually the only victims who could complain would be dead victims. Mr. Bybee even went so far as to state that the President could simply decree that any action taken as the Commander in Chief was immune from challenge. Most people who later read that memo immediately rejected its conclusions. But not the White House.

Instead, when the Bybee nomination was not acted on by the Senate in the 107th Congress, President Bush renominated him for the same judgeship in the 108th Congress. Although we asked for Bybee's OLC writings we received nothing, thus the Senate knew nothing about the Bybee memorandum on torture, and his nomination was confirmed.

William Haynes was, and still is, General Counsel to the Secretary of Defense. As such, he had a personal role in deciding how far Defense Officials could go in interrogating detainees. But he had a problem. High-level military officers and top State Department lawyers were experienced in these issues and the treaties that governed them, and they were adamantly opposed to the extreme change in policy that he and the Secretary and the White House were seeking.

So he formed a “working group” of lawyers that excluded these dissenters. That working group's report adopted verbatim some of the most outrageous parts of the Bybee memorandum. In one memo, for example, Mr. Haynes told Secretary Rumsfeld that waterboarding, forced nudity, the use of dogs to create stress, threats to kill the detainee's family, and other extreme tactics not only do not violate the Uniform Code of Military Justice, but are “humane.”

After he did that, the White House also nominated him to a lifetime judgeship on a Federal court of appeals. Fortunately, by the time the Judiciary Committee was ready to vote on his nomination in late 2003, we had become aware of some of his other controversial legal views, and the Senate did not confirm him. President Bush has chosen to renominate him, however, so the Senate will have another chance to review his role in support of torture.

Condoleezza Rice has been nominated to be Secretary of State, and we will consider her nomination later this week. As national security adviser she was clearly involved in the prisoner abuse issues, but because of the nature of her position, we know less about her role. Two of the members of the Foreign Relations Committee have voted against her nomination, and we will hear their full report in the coming debate.

White House Counsel Alberto Gonzales, as the President's chief in-

house lawyer, was at the heart of the debate, inside the administration, on prisoner detention and interrogation. Although he says he can't remember it very well, he apparently was the person the CIA contacted when they wanted to use extreme interrogation methods on those whom our troops and intelligence agents detained in Afghanistan and Iraq and elsewhere. He was the one who went to Mr. Bybee at the Department of Justice to obtain the notorious Bybee memorandum justifying the use of torture. He keeps saying he doesn't recall, but his office obviously helped Mr. Bybee develop the memorandum.

When Mr. Gonzales received the memorandum, he disseminated it far and wide in the military and elsewhere, although he can't remember how. For almost 2 years, Mr. Gonzales allowed this policy guideline to stand throughout the Government as the administration's formal policy on prisoner abuse. For almost 2 years it remained in effect, producing a system of detention and interrogation that the International Committee of the Red Cross, the FBI, the Defense Intelligence Agency itself found abhorrent to the rule of law. When the Bybee memorandum finally became public last summer, Mr. Gonzales attempted to distance himself and the President from it, but he didn't quite withdraw it.

Suddenly last month, the night before New Year's Eve, so late that most newspapers could not get the story in the next day's paper, Mr. Gonzales and his Justice Department and White House colleagues decided that the memo was so clearly erroneous and its standards so extreme, that it should be withdrawn altogether and replaced by a gentler version.

Members of the Senate have asked repeatedly for the relevant documents on all this. But we have not received a single one of the documents we need.

Four Senate committees have now considered some part of this issue. The Foreign Relations Committee had a brief opportunity to question Ms. Rice last week, but apparently not enough information on her involvement was available to assess her responsibility. The Intelligence Committee is still waiting to hear from the CIA on its role in the prisoner abuses, but as far as I know nothing has been forthcoming. Despite the initiatives and hard work of the chairman, the ranking member and many other members of the Armed Services Committee, Secretary Rumsfeld and his deputies have managed to stonewall and slow-walk us right through the election, and have used a series of separate investigations to propagate the original message that it was just a few bad apples on the night shift who committed the abuses.

We now are told that there was confusion and lack of clarity in the rules on interrogation without any indication of who was ultimately responsible, and without any accountability by those we know were involved, such as Mr. Haynes and Mr. Gonzales.

That leaves the Judiciary Committee, which is now considering Mr. Gonzales's nomination to be Attorney General. What standard should we apply to him? We know that rejection of a cabinet nominee is rare. In all of U.S. history, although hundreds of nominees have been stopped in committee or withdrawn by the President, only 9 of over 700 cabinet nominees have actually been rejected by the Senate. Two of them have been nominees for Attorney General. President Calvin Coolidge's nominee for Attorney General was rejected not once but twice and both times by a Senate of his own party.

Mr. Gonzales's case is a rare case in which a nominee may have been directly responsible for policies and resulting practices that have been counter-productive, contrary to international standards and practices, harmful to our troops' safety, legally erroneous, and plainly inconsistent with the rule of law and the basic values which this administration prides itself on defending.

President Bush's Inaugural Address resounded with those values last week. "From the day of our Founding," he said:

we have proclaimed that every man and woman on this earth has rights, and dignity, and matchless value, because they bear the image of the Maker of Heaven and earth.

The choice before every ruler and every nation, he said, is: the moral choice between oppression, which is always wrong, and freedom which is eternally right.

America's belief in human dignity will guide our policies,

he said.

Americans move forward in every generation by reaffirming all that is good and true that came before—ideals of justice and conduct that are the same yesterday, today, and forever.

Those are lofty values, and all of us agree with them wholeheartedly. But they were abandoned by the White House in its decision on the use of torture, and our credibility in the world as a leader on human rights and respect for the rule of law has been severely wounded. The cruelest dictators can now cite America's actions in their own defense.

How can we be true to our own oath to defend the Constitution, if we confirm as the highest legal officer in the land a person who may well have encouraged our basic values to be so grossly violated?

So far, Mr. Gonzales has not been responsive to our questions in the Judiciary Committee about his role. He still has time to clear the air, and I urge him to do so.

The position of Attorney General and the issues involved in this nomination go to the heart of our Nation's commitment to the rule of law. A nominee whose record raises serious doubts about his own commitment to the basic principle should not be confirmed as Attorney General of the United States.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CORNYN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER (Mr. BURR). Without objection, it is so ordered.

#### NOMINATIONS

Mr. CORNYN. Mr. President, I didn't intend to speak this afternoon, but after listening to the comments of the Senator from Massachusetts regarding four individuals, three of whose nominations are pending before this body, I believe a brief statement and indeed a brief correction of the RECORD are necessary.

I am well aware that in politics a charge unanswered is often a charge believed. Indeed, I think the practice is not too rare that some believe if you make the same erroneous charge over and over and over and over again despite the facts that eventually your opponent will tire and fail to correct the RECORD. I don't want to be guilty of that because I believe not only do the American people need to know the truth and not be misled, the nominees whose integrity has been impugned during this all too painful and sometimes even cruel process deserve better.

Obviously, the Senate in providing its advice and consent on the President's nominations should ask hard questions, and we should press for answers to those questions. But there does come a point where the process no longer becomes one that can be described as a search for the truth but, rather, becomes akin to harassment, and, unfortunately, I think that line has been approached.

Let me explain what I am talking about. The Senator from Massachusetts talked specifically about four individuals—Mr. Bybee, who is now a circuit court judge; Mr. Haynes, who is the general counsel for the Department of Defense; Condoleezza Rice who, as the Chair knows, we all know, has been nominated by the President to be Secretary of State, and whose confirmation we will debate tomorrow, and, finally, the name of Alberto Gonzales, currently White House counsel, having been nominated to serve as Attorney General. Those are the four individuals who are the object of his comments.

I want to be fair to the Senator from Massachusetts. Sometimes when I was listening to him I thought my hearing was betraying me. I was not quite sure what I heard was, in fact, what he was saying because it was so far from what I believe the facts to be. I believe, and the RECORD will correct me if I am wrong, he used words tantamount to authorize the use of torture. He did, and I wrote this down, speak of a "for-

mal policy of prisoner abuse"—of course, all of which pertains to the allegations, indeed, the proof in some circumstances, of prisoner abuse at places like Abu Ghraib.

To conflate the acts of a few criminals with the acts of distinguished public servants who have disavowed any policy, any approval, of abuse or the use of torture as a policy of this Government, to conflate and somehow confuse and gloss over them and to suggest that indeed these individuals did somehow by their acts or inactions authorize the use of torture or condone, encourage, or create a perception that torture was okay, is just false. It is a story, but it is a false story. The American people should not be confused because the facts clearly point to the contrary.

We do know that the Department of Defense, pursuant to the investigation called for by Secretary Rumsfeld, has conducted eight investigations, three of which have not yet concluded, of the Abu Ghraib prison scandal. So far, the conclusion has been, as well as that of the independent investigations like that of former Defense Secretary Schlesinger, that the acts at Abu Ghraib are the acts of a criminal few on the night shift, not a matter of public policy of this Government or of the Department of Defense or any branch or agency of the Government.

Indeed, recently we saw the American system of justice mete out that justice in convicting one soldier, Graner, of abusing prisoners at Abu Ghraib and meting out a 10-year prison sentence in that connection.

It is not true, and the American people should not be misled or perhaps be given information that has no justification in the Record. It is unproven, these allegations. They are unjustified. Frankly, I don't believe it does this body honor to propagate these false allegations.

Everyone has a right to their opinion. I know some of the speakers who are so concerned from time to time about what happened at Abu Ghraib, as we all are, disapprove of this Nation's policy in the first place in going to war in Iraq and removing Saddam Hussein. Somehow, and this is unthinkable to me, they actually think that the world would be a better place with Saddam still in power. I disagree. Not only is the world a better place with Saddam in a prison cell awaiting trial, but the American people are safer and the people of Iraq now have the hope of a free, fair election in the next week or so leading, we all hope, to a free and democratic Iraq.

While everyone has a right to their opinion, no one has a right to distort the facts. Unfortunately, when it comes to the involvement of these four individuals—Mr. Bybee, now Judge Bybee, confirmed by this Senate not too long ago by a vote of nearly 80 Senators; Mr. Haynes, who is the general counsel for the Department of Defense; and I mentioned, Condoleezza Rice